

Message Text

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PAGE 01 STATE 036830
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DRAFTED BY L/M:HFSHAMWELL, JR.:CEK
APPROVED BY L/M:KEMALMBORG
AF/S:KMCCORMICK
CA/SCS - L.MULLIN
S/CPR (INFO)
L/T (INFO)

-----125310 111845Z /73
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FM SECSTATE WASHDC
TO AMEMBASSY GABORONE
INFO AMEMBASSY MBABANE
AMEMBASSY MASERU

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E.O. 11652: N/A

TAGS: CGEN, BC, US

SUBJECT: PROPOSED BILATERAL CONSULAR CONVENTION

REF: GABORONE 2850, 1977

1. DEPARTMENT GREATLY APPRECIATES EMBASSY'S COMMENTS ON
DRAFT CONSULAR CONVENTION AND REGRETS DELAY IN RESPONDING
THERE TO. DEPARTMENT'S THINKING ON SPECIFIC POINTS RAISED
BY EMBASSY FOLLOWS.

2. RE OBSERVATIONS EXPRESSED PARA 1, SUBPARAS A-E, REFTTEL,
DEPARTMENT IS IN GENERAL AGREEMENT, BUT PREFERS TO PROCEED
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PAGE 02 STATE 036830

WITH TYPE OF CONVENTION WHICH GENERALLY MEETS USG NEEDS, AT
LEAST DURING THE FIRST GO-ROUND WITH THE GOB, AND PARE DOWN
OR BUILD UP AS NECESSARY.

3. WITH RESPECT TO COMMENTS CONTAINED PARA 2, A AND B, ON
A "DIPLOMATIC MISSION PERFORMING CONSULAR FUNCTIONS" AS

OPPOSED TO A SEPARATE CONSULATE, DEPT. DOES NOT BELIEVE IT WISE TO AMEND DEFINITION OF "CONSULATE" TO INCLUDE THIS TYPE OF OPERATION. DEPARTMENT IS IN FULL AGREEMENT THAT NO SEPARATE CONSULATE IS LIKELY TO BE OPENED IN NEAR FUTURE AND THAT ANY MISUNDERSTANDING ON PART OF GOB ON THIS POINT SHOULD BE CLARIFIED. NEVERTHELESS, THE PRECEDENT CREATED

BY AMENDING THE STANDARD CONSULAR CONVENTION LANGUAGE TO RESOLVE THIS RELATIVELY MINOR PROBLEM COULD LEAD TO SIGNIFICANT LEGAL PROBLEMS IN OTHER PARTS OF THE WORLD. FOR THIS REASON, WE WOULD PREFER SEPARATE ORAL OR, IF NECESSARY WRITTEN ASSURANCE ON THIS POINT. IT IS FURTHER NOTED THAT THE QUESTION OF THE PERFORMANCE OF CONSULAR FUNCTIONS BY MEMBERS OF THE DIPLOMATIC MISSION AND THAT OF PRIVILEGES AND IMMUNITIES FOR DIPLOMATIC OFFICERS IN THE PERFORMANCE OF SUCH FUNCTIONS ARE ADEQUATELY DEALT WITH IN ARTICLE 7 OF THE DRAFT CONVENTION.

4. DEPARTMENT AGREES THAT IT IS ADVISABLE TO ADD TO ARTICLE 1 A DEFINITION OF "AIRCRAFT OF THE SENDING STATE", AND THE EMBASSY'S SUGGESTED LANGUAGE IS ACCEPTABLE. NEVERTHELESS, IT IS CONSIDERED INADVISABLE TO ELIMINATE THE DEFINITION OF "VESSEL OF THE SENDING STATE", EVEN THOUGH IT HAS NO APPLICABILITY TO BOTSWANA UNDER PRESENT CIRCUMSTANCES. SINCE IT IS AT LEAST CONCEIVABLE THAT AT SOME TIME IN THE DISTANT FUTURE THE GOB MAY OWN SOME VESSELS OR AUTHORIZE ITS FLAG FOR CONVENIENCE SAKE, THE DEFINITION SHOULD BE LIMITED OFFICIAL USE

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PAGE 03 STATE 036830

RETAINED UNTIL SUCH TIME AS IT APPEARS THAT THE GOB FINDS IT UNACCEPTABLE OR UNWORKABLE TO THE POINT OF HAMPERING PROGRESS ON MORE MEANINGFUL ISSUES.

5. RE QUESTIONS RAISED PARA 2(D) REGARDING EFFECT OF CONSULAR CONVENTION ON STATUS OF RESPECTIVE EMBASSIES AND TITLES FOR EMBASSY OFFICERS, NO FORMAL CHANGES NEED BE MADE. THE EMBASSY WOULD RETAIN ITS EXISTING DESIGNATION AND IT WOULD NOT BE NECESSARY FOR THE AMBASSADOR OR ANY OTHER OFFICER TO SEEK SEPARATE CONSULAR RECOGNITION UNDER THE APPROPRIATE PROVISIONS OF THE CONSULAR CONVENTION. HOWEVER, THERE IS EXISTING PRACTICE UNDER WHICH DIPLOMATIC OFFICERS WHO PERFORM CONSULAR FUNCTIONS AT A DIPLOMATIC MISSION CAN BE DUALY ACCREDITED IN BOTH A DIPLOMATIC AND CONSULAR CAPACITY. OFTEN THE SEPARATE CONSULAR RECOGNITION FACILITATES DIPLOMATIC OFFICERS IN THE PERFORMANCE OF PURELY CONSULAR FUNCTIONS AND SOMETIMES EXTENDS TO THEM ADDITIONAL PRIVILEGES OTHERWISE NOT ACCORDED TO DIPLOMATIC OFFICERS. AS WITH THE QUESTIONS OF AN ASSURANCE TO THE GOB THAT THE U.S. DOES NOT INTEND TO OPEN A SEPARATE CONSULATE IN GABORONE, DEPARTMENT BELIEVES BEST WAY TO DEAL WITH THIS

AND RELATED ISSUES ON NATURE AND STATUS OF OFFICIAL U.S. REPRESENTATION IS THROUGH A SEPARATE COMMUNICATION TRANSMITTED IN CONNECTION WITH SIGNATURE OF THE CONVENTION.

6. RE GOB'S INABILITY TO ISSUE CONSULAR IDENTIFICATION DOCUMENTS (PARA 2(E) REFTEL), NO SERIOUS PROBLEMS SHOULD BE ENCOUNTERED AS LONG AS THERE IS AN UNDERSTANDING CONCERNING

PERFORMANCE OF CONSULAR FUNCTIONS BY DIPLOMATIC OFFICERS, WHO, IT IS ASSUMED, WILL BE ADEQUATELY DOCUMENTED.

7. COMMENT CONTAINED SUBPARA R OF PARA 2 REFTEL IS ANSWERED IN DISCUSSION CONTAINED PARA 3 ABOVE.

8. WITH RESPECT TO WIRELESS TRANSMITTERS, DEPT IS NOT IN LIMITED OFFICIAL USE

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PAGE 04 STATE 036830

POSITION TO ELIMINATE REQUIREMENT TO OBTAIN PRIOR EXPRESS PERMISSION SINCE U.S. FEDERAL LAW SO REQUIRES. DEPT TAKES POSITION, HOWEVER, THAT EXISTING TRANSMITTERS WOULD NOT BE AFFECTED BY INCORPORATING THIS REQUIREMENT IN NEW CONSULAR CONVENTION.

9. COMMENT IN SUBPARA H ON REFERENCE TO "MASTER OF VESSEL" IS RESPONDED TO IN PARA 4 ABOVE.

10. QUESTION ON LIMITATION OF IMMUNITY FOR CONSULAR OFFICERS AND CONSULAR EMPLOYEES RAISED SUBPARA I IS BEST ANSWERED BY REFERENCE TO ARTICLE 43(2)(B) OF THE VIENNA CONSULAR RELATIONS CONVENTION. DEPT PREFERS TO RETAIN SUCH AN EXCEPTION WHICH HAS DEVELOPED INTO A CUSTOMARY RULE.

11. RE DRAFT ARTICLE 20 ON IMMUNITY FROM REGISTRATION (CITED SUBPARA K); DEPT IS NOT CERTAIN TO WHAT EXTENT REGISTRATION WITH IMMIGRATION DEPARTMENT WOULD CONFLICT WITH THE DRAFT CONVENTION'S PROHIBITION. RATHER THAN ELIMINATE THIS ARTICLE, A CUSTOMARY PROVISION IN CONSULAR CONVENTIONS, DEPARTMENT WOULD PREFER TO EXPLORE ISSUE IN MORE DETAIL IN NEGOTIATIONS.

12. DEPT. DOES NOT UNDERSTAND CONCERN EXPRESSED SUBPARA L RESPECTING EFFECT OF TAX EXEMPTIONS FOR CONSULAR PROPERTIES ON RENTAL RATES. THE DRAFT ARTICLE DOES NOT EXTEND A TAX EXEMPTION TO LANDLORDS OF RENTAL PROPERTY. UNLESS UNDER THE LAW OF THE RECEIVING STATE THE CONSULATE AS TENANT WOULD HAVE LEGAL LIABILITY FOR THE TAXES, NO EXEMPTION WOULD BE EXTENDED TO THE PROPERTY AND, HENCE, THERE WOULD BE NO BASIS FOR CONSIDERATION OF A REDUCTION IN RENTALS, ALTHOUGH DEPT FAILS TO UNDERSTAND WHY THAT RESULT WOULD BE ANYTHING BUT DESIRABLE.

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PAGE 05 STATE 036830

13. DEPT ENTHUSIASTICALLY ENDORSES EMBASSY'S RECOMMENDATIONS RE CHANGES IN TIME LIMITS FOR NOTIFICATION AND ACCESS UNDER DRAFT ARTICLE 37.

14. FOR REASONS STATED ABOVE, DEPARTMENT DOES NOT AUTHORIZE ANY CHANGES IN ARTICLES 41, 42, AND 43.

15. WITH CHANGES AS NOTED ABOVE, EMBASSY IS AUTHORIZED TO PRESENT DRAFT TO GOB AS PRELIMINARY U.S. VIEW ON TEXT OF BILATERAL CONSULAR CONVENTION. AS EMBASSY DEEMS APPROPRIATE, IT MAY DRAW ON POINTS DISCUSSED WHEN AMB. NORLAND MET WITH MR. SHAMWELL AND MRS. MULLIN IN THE DEPARTMENT (JANUARY 16) WITH A VIEW TOWARDS ALLEVIATING ANY SUSPICION ON PART OF GOB AND IRONING OUT SOME OF THE ANTICIPATED TROUBLE AREAS REFERRED TO REFTEL AND DISCUSSED IN THIS CABLE. DEPT WOULD APPRECIATE AN UPDATED REPORT WHEN AVAILABLE AND WILL BE HAPPY TO PROVIDE WHATEVER ADDITIONAL ASSISTANCE IS REQUIRED AT THIS STAGE. VANCE

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